

DATE: April 27, 2023

TO: Public Safety Advisory Board

FROM: Saul Jaeger, Police Captain

SUBJECT: **2022 Assembly Bill 481—Military Equipment Annual Report**

PURPOSE

Review, take input, and discuss the 2022 Mountain View Police Department Assembly Bill 481, Military Equipment Annual Report.

BACKGROUND

On September 30, 2021, Governor Newsom signed a series of police reform bills, including Assembly Bill 481 (AB 481), which stated that the public has a right to know and to participate in the decision-making processes related to the funding, acquisition, or use of military equipment by State or local government officials in an effort to increase transparency, accountability, and oversight. AB 481 called for local agencies to develop a policy and prepare an annual report in accordance with the requirements below. In so doing, the legislation encouraged agencies to give strong consideration to the public's welfare, safety, civil rights, civil liberties, and public input.

The legislation required that local law enforcement agencies, which seek to continue the use of military equipment acquired prior to January 1, 2022, accomplish the following tasks. **These tasks have been completed:**

1. Draft a military equipment funding, acquisition, and use policy that describes each piece of military equipment and the authorized uses for each piece of equipment (Attachment 1);
2. Seek approval of the policy from their governing body by ordinance for the continued use of existing military equipment before acquiring new military equipment or seeking funds for equipment purposes (which was accomplished on May 10, 2022); and
3. Make publicly available any proposed or final military equipment use policy, for as long as the military equipment is available for use, on the agency's website.

The Mountain View City Council adopted Ordinance No. 7.22 on May 10, 2022 (“Ordinance”), which approved Mountain View Police Department Policy 709: Military Equipment (“Policy”) (Attachment 2).

In addition to the above requirements, AB 481 also required, at least annually, that the law enforcement agency shall:

1. Prepare an annual military equipment report with at least one “well-publicized and conveniently located community-engagement meeting” to allow for public discussion of the report; and
2. Present the Ordinance for review and renewal at a Regular Meeting of the governing body. During this review, the governing body shall consider the annual report and determine whether each type of military equipment has complied with specified standards for approval.

In accordance with the City Council’s direction at its May 10, 2022 meeting, the 2022 AB 481 Military Equipment Annual Report (“2022 Annual Report”) (Attachment 2) is being presented at this meeting of the Public Safety Advisory Board (PSAB) to satisfy Annual Requirement No. 1 above by facilitating public discussion of the 2022 Annual Report and Mountain View Police Department’s (MVPD) funding, acquisition, or use of military equipment in a well-publicized and conveniently located community engagement meeting. This PSAB meeting is taking place within 30 days of submittal of the 2022 Annual Report to City Council and its publication on the City’s website in accordance with AB 481.

DISCUSSION

AB 481 Definition of Military Equipment

AB 481 defines “military equipment” as follows and differentiates the equipment by category. AB 481 does not prohibit law enforcement from obtaining and using the above equipment; rather, it creates a public process for obtaining approval for these types of equipment and their authorized uses. The MVPD possesses equipment in eight of the 15 categories listed, as noted with an asterisk (see Attachment 2 for full descriptions).

- ***Category 1:** Unmanned, remotely piloted, powered aerial, or ground vehicles.
- **Category 2:** Mine-resistant, ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.

- **Category 3:** High-mobility multi-purpose wheeled vehicles (HMMWV), commonly referred to as Humvees, 2-1/2-ton trucks, 5-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.
- **Category 4:** Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- ***Category 5:** Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- **Category 6:** Weaponized aircraft, vessels, or vehicles of any kind.
- ***Category 7:** Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.
- ***Category 8:** Firearms of .50-caliber or greater. However, standard-issue shotguns are specifically excluded from this subdivision.
- ***Category 9:** Ammunition of .50-caliber or greater. However, standard-issue shotgun ammunition is specifically excluded from this subdivision.
- ***Category 10:** Specialized firearms and ammunition of less than .50-caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard-issue service weapons and ammunition of less than .50-caliber that are issued to officers, agents, or employees of a law enforcement agency or a State agency.
- **Category 11:** Any firearm or firearm accessory that is designed to launch explosive projectiles.
- ***Category 12:** “Flashbang” grenades and explosive breaching tools, “tear gas,” and “pepper balls,” excluding standard, service-issued handheld pepper spray.
- **Category 13:** Taser Shockwave, microwave weapons, water cannons, and the Long-Range Acoustic Device (LRAD).
- ***Category 14:** The following projectile launch platforms and their associated munitions: 40-millimeter projectile launchers, “bean bag,” rubber bullet, and specialty impact munition (SIM) weapons.

- **Category 15:** Any other equipment as determined by a governing body or a State agency to require additional oversight.

Current MVPD Equipment Meeting Military Equipment Designation

The MVPD continues to carefully assess what equipment is needed to protect the public and Officers when resolving critical incidents, such as active shooter response, apprehending violent offenders, hostage rescue, and barricaded subjects, among others. Certain equipment is also beneficial in providing information and in creating cover, distance, and time that help to improve the decision-making process during critical incidents. This allows responding Officers to take in and evaluate the totality of the circumstances, which results in increased safety and reduced risk for everyone involved.

In general, all the equipment listed in the report is highly specific in its use and is not carried day-to-day (the exception being patrol AR-15 rifles, which are stored and locked in each patrol vehicle). Items below may be used a few times a year, and their deployment requires departmental notifications. **In 2022, the equipment was minimally used, largely related to training and certification.** More information about the frequency and manner of use for various types of equipment is provided in Attachment 1.

Many of the items designated by AB 481 as military equipment have been in MVPD's equipment inventory for decades. The MVPD's operating procedures and training program instruct staff in the proper use of this equipment.

Current Policies and Procedures for Equipment Purchase and Use

The MVPD adheres to the City's budget process and its purchasing policies and procedures when procuring its equipment. The acquisition of new or replacement equipment or items meeting the reporting requirements of AB 481 is funded from the MVPD budget in accordance with MVPD Policy No. 709—Military Equipment (Attachment 2) and the approval of the City Council.

As noted in the 2022 AB 481 Annual Report, the only purchases proposed relate to the replacement of two existing drones and the purchase of two additional drones for indoor use. In addition, purchases may occur to replace materials used up during the year for training or operational purposes, potentially including ammunition, specialty munitions, noise flash diversionary devices, and breaching equipment.

The use of equipment is governed by MVPD Policy No. 300, Use of Force and Deescalation Policy, and Policy No. 308, Control Devices and Techniques. In addition, the State of California Commission on Peace Officer Standards and Training (POST) establishes operational guidelines

and training recommendations for certain equipment and tactics, and compliance with these guidelines is managed by MVPD's designated subject-matter experts.

All MVPD policies and procedures that govern safe handling, storage, and qualification related to specified equipment remain in effect. This includes, but is not limited to, California Occupational Safety and Health Agency (OSHA) certification of energetic breaching operators; Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) oversight of energetic breaching materials; and ATF oversight of Noise-Flash Diversionary Devices.

In 2022, the City did not receive any complaints or concerns regarding the use of equipment specified in AB 481. There were no violations of MVPD Policy No. 709—Military Equipment.

RECOMMENDATION

Staff recommends that the PSAB review, take public input, and discuss the 2022 AB 481 Military Equipment Annual Report.

NEXT STEPS

Staff will present the 2022 AB 481 Military Equipment Annual Report and MVPD Policy No. 709—Military Equipment to the City Council for its review at the May 9, 2023, City Council meeting. This will include a summary of the input from the April 27, 2023, PSAB meeting. On May 9, the City Council will review the 2022 Annual Report and Ordinance, and determine whether to renew the Ordinance, and whether the military equipment identified in the 2022 Annual Report has complied with the standards for approval as set forth in the Ordinance.

SJ/MP/1/POL
189-04-27-23M

Attachments: 1. 2022 Assembly Bill 481 Military Equipment Annual Report
2. MVPD AB 481 Policy No. 709—Military Equipment